



In at least one unpublished case, the Eighth Circuit has held that a claim may be properly dismissed for an inmate's failure to comply with the Missouri statute requiring an affidavit. Moore v. Ernest-Jackson, 16 Fed. Appx. 517 (8<sup>th</sup> Cir. 2001). Plaintiff's constitutional argument is unsupported by case law.

Plaintiff has been under house arrest for approximately thirty days. His state law claims will be recommended dismissed for his failure to comply with the requirements of the statute. The court will reconsider the recommendation of dismissal, however, if plaintiff files the required affidavit within thirty days of the date of the recommendation.

On October 4, 2005, plaintiff filed a motion seeking a court order directing the Department of Corrections to provide him with priority mail envelopes. Defendants responded in opposition to the motion and plaintiff replied. Plaintiff noted in his reply that he was scheduled for release from incarceration and was going to be placed on house arrest parole at the end of October 2005. On October 26, 2005, plaintiff filed a change of address with the court. Accordingly, his request of October 4, 2005, is moot.

On October 21, 2005, plaintiff renewed his request for appointment of counsel. He indicated that while he is on house arrest he will not have access to a law library and that he has problems writing with his right hand because of the damage done to it. Plaintiff should continue to attempt to find counsel without court intervention, and should make inquiries to see what community legal resources he may access or obtain while on house arrest. After the pending motions to dismiss are ruled<sup>1</sup>, and after plaintiff has further explored the options noted above, he may renew his request for appointment of counsel, if necessary. Accordingly, it is

ORDERED that plaintiff's motion of October 4, 2005, for an order directing the Department of Corrections to provide him with priority mail envelopes is denied as moot [21] It is further

ORDERED that plaintiff's motion of October 21, 2005, for appointment of counsel is denied, without prejudice [26]. It is further

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<sup>1</sup>A second motion to dismiss was filed on October 28, 2005, and plaintiff has not responded to the motion within the time limits set by local rules.

ORDERED that plaintiff's request for an extension of time to file the affidavit is granted, in part, in that the court will reconsider the recommendation set forth below if plaintiff files the required affidavit within thirty days of the date of this report, recommendation and order [18]. It is further

ORDERED that within twenty days, plaintiff show cause, in writing, why defendants' motion of October 28, 2005, to dismiss should not be granted. It is further

RECOMMENDED that defendants' motion of August 18, 2005, to dismiss plaintiff's state law negligence and malpractice claims for failure to comply with Missouri statutory requirements be granted, with dismissal to be without prejudice [14].

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. If additional time is needed, a motion for an extension of time must be filed within twenty days. The motion should state the reasons for the request. See Nash v. Black, 781 F.2d 665, 667 (8th Cir. 1986) (citing Thomas v. Arn, 474 U.S. 140 (1985)); Messimer v. Lockhart, 702 F.2d 729 (8th Cir. 1983). Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this 30<sup>th</sup> day of November, 2005, at Jefferson City, Missouri.

/s/ \_\_\_\_\_

WILLIAM A. KNOX  
United States Magistrate Judge